

# House Bill 4090

Sponsored by Representatives FAHEY, GAMBA, SMITH G; Representatives LEVY E, OWENS, PHAM K, Senators FINDLEY, PATTERSON (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Removes EFSC power over a project that makes clean power or is a power line, is only on U.S. lands and is reviewed under NEPA. (Flesch Readability Score: 63.0).

Prohibits the Energy Facility Siting Council from exercising jurisdiction over or requiring a site certificate for an energy facility that is a renewable energy facility or transmission line, is sited wholly within federal lands and is subject to review under the National Environmental Policy Act.

## A BILL FOR AN ACT

1  
2 Relating to the permitting of energy facilities; amending ORS 469.370.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 469.370 is amended to read:

5 469.370. (1) Based on its review of the application and the comments and recommendations on  
6 the application from state agencies and local governments, the State Department of Energy shall  
7 prepare and issue a draft proposed order on the application.

8 (2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold  
9 one or more public hearings on the application for a site certificate in the affected area and else-  
10 where, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days  
11 before the hearing. The notice shall, at a minimum:

12 (a) Comply with the requirements of ORS 197.797 (2), with respect to the persons notified;

13 (b) Include a description of the facility and the facility's general location;

14 (c) Include the name of an agency representative to contact and the telephone number where  
15 additional information may be obtained;

16 (d) State that copies of the application and draft proposed order are available for inspection at  
17 no cost and will be provided at a reasonable cost; and

18 (e) State that failure to raise an issue in person or in writing prior to the close of the record  
19 of the public hearing with sufficient specificity to afford the decision maker an opportunity to re-  
20 spond to the issue precludes consideration of the issue in a contested case.

21 (3) Any issue that may be the basis for a contested case shall be raised not later than the close  
22 of the record at or following the final public hearing prior to issuance of the department's proposed  
23 order. Such issues shall be raised with sufficient specificity to afford the council, the department  
24 and the applicant an adequate opportunity to respond to each issue. A statement of this requirement  
25 shall be made at the commencement of any public hearing on the application.

26 (4) After reviewing the application, the draft proposed order and any testimony given at the  
27 public hearing and after consulting with other agencies, the department shall issue a proposed order  
28 recommending approval or rejection of the application. The department shall issue public notice of

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the proposed order, that shall include notice of a contested case hearing specifying a deadline for  
2 requests to participate as a party or limited party and a date for the prehearing conference.

3 (5) Following receipt of the proposed order from the department, the council shall conduct a  
4 contested case hearing on the application for a site certificate in accordance with the applicable  
5 provisions of ORS chapter 183 and any procedures adopted by the council. The applicant shall be  
6 a party to the contested case. The council may permit any other person to become a party to the  
7 contested case in support of or in opposition to the application only if the person appeared in person  
8 or in writing at the public hearing on the site certificate application. Issues that may be the basis  
9 for a contested case shall be limited to those raised on the record of the public hearing under sub-  
10 section (3) of this section, unless:

11 (a) The department failed to follow the requirements of subsection (2) or (3) of this section; or

12 (b) The action recommended in the proposed order, including any recommended conditions of the  
13 approval, differs materially from that described in the draft proposed order, in which case only new  
14 issues related to such differences may be raised.

15 (6) If no person requests party status to challenge the department's proposed order, the proposed  
16 order shall be forwarded to the council and the contested case hearing shall be concluded.

17 (7) At the conclusion of the contested case, the council shall issue a final order, either approving  
18 or rejecting the application based upon the standards adopted under ORS 469.501 and any additional  
19 statutes, rules or local ordinances determined to be applicable to the facility by the project order,  
20 as amended. The council shall make its decision by the affirmative vote of at least four members  
21 approving or rejecting any application for a site certificate. The council may amend or reject the  
22 proposed order, so long as the council provides public notice of its hearing to adopt a final order,  
23 and provides an opportunity for the applicant and any party to the contested case to comment on  
24 material changes to the proposed order, including material changes to conditions of approval re-  
25 sulting from the council's review. The council's order shall be considered a final order for purposes  
26 of appeal.

27 (8) Rejection or approval of an application, together with any conditions that may be attached  
28 to the certificate, shall be subject to judicial review as provided in ORS 469.403.

29 (9) The council shall either approve or reject an application for a site certificate:

30 (a) Within 24 months after filing an application for a nuclear installation, or for a thermal power  
31 plant, other than that described in paragraph (b) of this subsection, with a nameplate rating of more  
32 than 200,000 kilowatts;

33 (b) Within nine months after filing of an application for a site certificate for a combustion tur-  
34 bine power plant, a geothermal-fueled power plant or an underground storage facility for natural  
35 gas;

36 (c) Within six months after filing an application for a site certificate for an energy facility, if  
37 the application is:

38 (A) To expand an existing industrial facility to include an energy facility;

39 (B) To expand an existing energy facility to achieve a nominal electric generating capacity of  
40 between 25 and 50 megawatts; or

41 (C) To add injection or withdrawal capacity to an existing underground gas storage facility; or

42 (d) Within 12 months after filing an application for a site certificate for any other energy facil-  
43 ity.

44 (10) At the request of the applicant, the council shall allow expedited processing of an applica-  
45 tion for a site certificate for an energy facility with an average electric generating capacity of less

1 than 100 megawatts. No notice of intent shall be required. Following approval of a request for ex-  
 2 pedited review, the department shall issue a project order, which may be amended at any time. The  
 3 council shall either approve or reject an application for a site certificate within six months after  
 4 filing the site certificate application if there are no intervenors in the contested case conducted  
 5 under subsection (5) of this section. If there are intervenors in the contested case, the council shall  
 6 either approve or reject an application within nine months after filing the site certificate applica-  
 7 tion. For purposes of this subsection, the generating capacity of a thermal power plant is the  
 8 nameplate rating of the electrical generator proposed to be installed in the plant.

9 (11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this  
 10 section shall not result in the automatic issuance or denial of a site certificate.

11 (12) The council shall specify in the site certificate a date by which construction of the facility  
 12 must begin.

13 ~~[(13)]~~ **(13)(a) Except as provided in paragraph (b) of this subsection**, for a facility that is  
 14 subject to and has been or will be reviewed by a federal agency under the National Environmental  
 15 Policy Act, 42 U.S.C. ~~[Section]~~ 4321[,] et seq., the council shall conduct its site certificate review, to  
 16 the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal  
 17 agency review. Such coordination shall include, but need not be limited to:

18 ~~[(a)]~~ **(A)** Elimination of duplicative application, study and reporting requirements;

19 ~~[(b)]~~ **(B)** Council use of information generated and documents prepared for the federal agency  
 20 review;

21 ~~[(c)]~~ **(C)** Development with the federal agency and reliance on a joint record to address appli-  
 22 cable council standards;

23 ~~[(d)]~~ **(D)** Whenever feasible, joint hearings and issuance of a site certificate decision in a time  
 24 frame consistent with the federal agency review; and

25 ~~[(e)]~~ **(E)** To the extent consistent with applicable state standards, establishment of conditions in  
 26 any site certificate that are consistent with the conditions established by the federal agency.

27 **(b) The council may not exercise jurisdiction over or require a site certificate for a fa-**  
 28 **cility that is:**

29 **(A) Sited wholly on federal land;**

30 **(B) Subject to and has been or will be reviewed by a federal agency under the National**  
 31 **Environmental Policy Act, 42 U.S.C. 4321 et seq.; and**

32 **(C) An “energy facility” as defined as any of the following:**

33 **(i) An electric power generating plant under ORS 469.300 (11)(a)(A) that does not produce**  
 34 **electric power from fossil fuels;**

35 **(ii) A high voltage transmission line under ORS 469.300 (11)(a)(C);**

36 **(iii) A solar photovoltaic power generation facility under ORS 469.300 (11)(a)(D); or**

37 **(iv) An electric power generating plant under ORS 469.300 (11)(a)(J).**

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